

# In Water We Trust

*The DNR continues to fulfill its mission of helping people use the waterfront while protecting Wisconsin's public waters. How well did Department staff do in 2002?*

## The 2002 Annual Report

Administrative Report No. 55

**D**id you know that Wisconsin's waters are publicly owned and forever protected under the state Constitution? If not you are probably not alone. Many folks who live along one of our many lakes or streams simply assume they own the waters bordering or inside their property. But the truth is that almost all of this water and much of the land under it is publicly owned. In most natural lakes, private property ownership ends at the "ordinary high water mark." The bottom of most streams and flowages is privately owned but the water flowing over the land and its use is public.

Our State Constitution specifically protects the public's interests and rights on Wisconsin's waters by declaring that they will remain "forever free." This powerful protection is unique among states and the main reason that Wisconsin still has the outstanding aquatic resources that attract residents and tourists for world class fishing, boating, sightseeing, and even retirement. The Wisconsin DNR is the trustee of these constitutionally protected resources. DNR's waterway and wetland permit program ensures that landowners and others wishing to alter our fragile shorelands and shallows do so in an environmentally friendly manner.

Wisconsin's water resources seem vast, but the habitat along shorelines and shallows is limited, threatened and in great demand. This narrow band of aquatic habitat is nursery and home to fish and wildlife, a filter that protects water quality from runoff, and a screen that assures the privacy and scenic views that draw people to the water in the first place. Unfortunately, this critical habitat is also the most convenient place to store boats and build patios. Balancing these needs and desires is very challenging and will remain so.

While our responsibility to protect Wisconsin's water resources for future generations is paramount, we also recognize the importance of working with landowners and others seeking permits in as timely and helpful a manner as possible. The DNR has a statewide staff of 35 water management specialists and engineers who answer over 10,000 public inquiries and issue nearly 5,000 permits annually. The program is funded primarily by state general purpose revenues though significant funding comes from permit fees paid by applicants and the state motorboat gas tax.

We have made major changes over the past five years to improve customer service while still maintaining a high level of resource protection. We've secured additional funding to add additional

temporary and permanent permit specialists. We've developed a comprehensive web site which contains permit applications, laws, guidance, reference documents and staff contacts. We've computerized our permit databases, wetlands maps, and waterways maps so staff can more quickly find information needed to review applications. We've expanded our staff training programs. We've streamlined permit conditions and entered into partnerships with municipal and federal agencies to minimize duplication of effort.

And this first-ever *DNR Waterway and Wetland Program Annual Report* documents significant improvements. Even though the number of permit applications continues to grow, the time it takes to receive a permit has dropped by over half. As late as 1997 an average permit took 110 days to process. In 2002 that same number was only 43 days. The report also documents that 92% of all permits were approved many after staff worked with the applicant to minimize environmental impacts. By any reasonable measure this program is working and continues to improve but we are committed to continuing to evaluate and improve our program and welcome feedback and new ideas from permit applicants, anglers, boaters and other users of Wisconsin's public waters.

The year 2003 is Wisconsin's "Year of Water." Important questions are being asked about what Wisconsin's waters will be like in 50 years. Will we Wisconsinites and our visitors fish, canoe, boat, or retire here on our clear and scenic lakes and rivers? Or will declining habitats and scenic values force those folks to head elsewhere? We believe the DNR waterways and wetland permit program plays a critical role in shaping Wisconsin's future and keeping it a special place to live. A look at our record in 2002 makes us confident that, with the help of our partners, we can continue to protect Wisconsin's public waters, accommodate private property owners, and sustain the environment, economy and quality of life that make Wisconsin such a great place to live.

Sincerely,



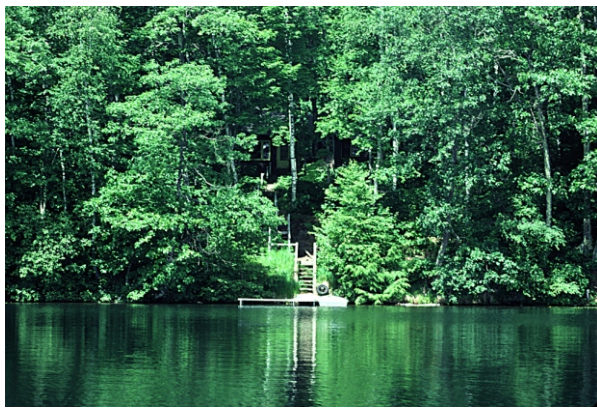
Mike Staggs, Director  
Bureau of Fisheries Management &  
Habitat Protection



## Waterway and Wetland Permitting

### Introduction

*What is the waterway and wetland permit program?* Wisconsin's Constitution holds that lakes and rivers are public resources that belong to all citizens. State laws prohibit most structures or alterations in or near these waters and wetlands unless a permit has been granted. In order to receive a permit, state law requires an applicant to show that his project isn't likely to interfere with public rights in that water. Boating, fishing, hunting, and enjoying natural scenic beauty are protected public rights, as are the habitat, water quality and water quantity needed to



support these uses. In addition, wetlands can be filled only if there are no practical alternatives for achieving the project's overall purpose. Structures typically requiring permits include large piers, bridges, dams, seawalls and other shore erosion control devices. Projects involving large-scale grading, dredging and construction of connecting channels or ponds also require state permits.

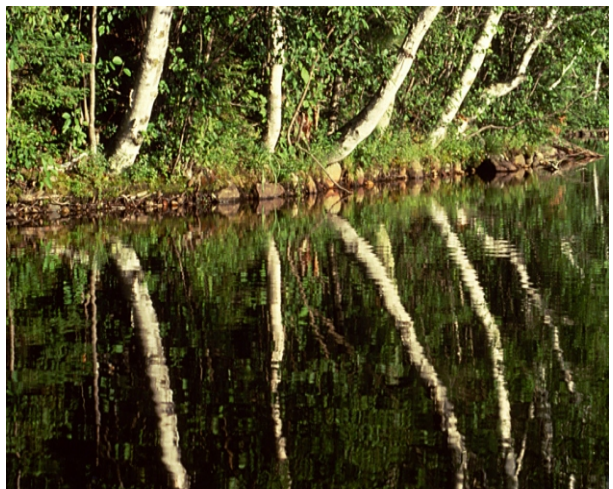
*How does the permit process help landowners and protect Wisconsin waters?* DNR's review essentially involves comparing public rights in the affected lake or stream before and after the project. When DNR receives a permit application, staff routinely work with applicants to make any changes that will eliminate the need for a permit or minimize the potential for harm to lakes, streams or wetlands. Typically, applicants need to supply additional information after DNR's initial review to complete the application. DNR staff may inspect the project site, review data on fisheries and water quality affected by the project, consult with fish and wildlife biologists or wardens to make their permit decision.

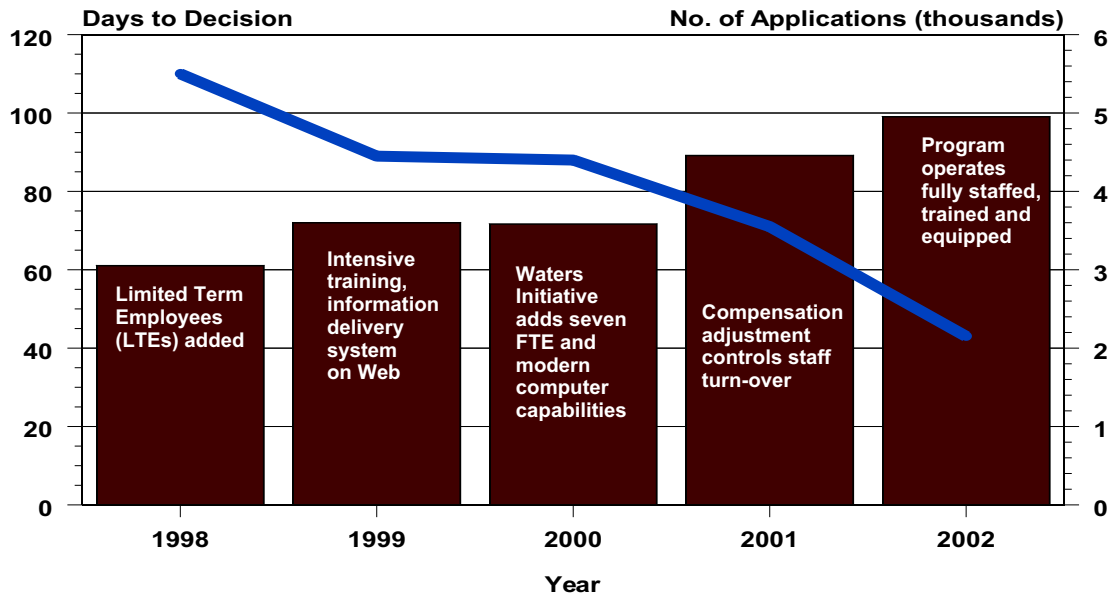
They will also review statute and code standards, along with agency handbooks and scientific literature, to determine whether the standards for granting a permit can be met. For larger projects, a newspaper notice is published giving concerned citizens 30 days to request a hearing on the project. Once review is complete, DNR staff delivers a written decision detailing the facts on which their decision is based.

### Program Background

*What are public waters and public rights? Where did they come from?* Wisconsin's Constitution declares that all navigable waters are "common highways and forever free" and are held in trust by the state for the benefit of its citizens. Laws stemming from the Constitution require the state to protect public rights in the use of navigable waters. Court, agency and citizen action have determined those rights to include public rights to water quality and quantity, recreational activities and scenic beauty.

The DNR is the state agent charged with protecting the public's rights in public waters by carrying out the permit program under the direction of Chapters 30 and 31 of the Wisconsin Statutes, the NR300 series of Wisconsin Administrative Codes, and an extensive body of court decisions. The permit program balances protecting all citizens' rights in public waters with the rights of "riparians," owners of lands bordering lakes and rivers, to use the water next to their property. Riparian rights include access to the water, protection of upland against erosion,





**Figure 1.** The reduction in the number of days to decision from 1998 to 2002 with the corresponding increase in the number of applications over the same time period. Key management actions are identified by year.

reasonable diversion of the water, and building piers for navigation.

The Wisconsin Supreme Court has consistently ruled that when conflicts occur between the rights of riparian owners and public rights, the public's rights are paramount. The court also has ruled that DNR staff, when reviewing permit applications, must consider the cumulative impacts of individual projects over time on lakes, rivers and wetlands.

### Landowners Receive Permit Decisions More Quickly

While DNR's job is safeguarding the public's rights in public waters, we understand that time is money for people hiring contractors or developing land. That's why we monitor how long it takes to move a waterfront or wetland project from application to decision. That time includes time taken by the applicant to submit complete designs and analyses (typically a quarter of the total decision time), review by waterway and wetland permit staff, as well as other DNR staff, and public comment periods. In 10 cases in 2002, the decision time included hearings or court proceedings.

We've worked hard to shorten decision times through a variety of steps including retaining experienced

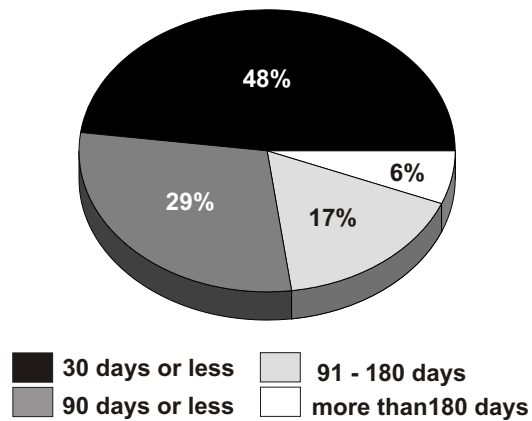
staff with salary incentives, adding field staff positions and modernizing computer equipment through the state budget. These and other steps are detailed later in the report.

The result of such improvements is the DNR is reviewing more permits in less time. In 2002, the agency reviewed 4,869 permits and the average landowner received a decision in 43 days, down from 110 days five years ago (Figure 1). Forty-eight percent of applicants received their permit decision in 30 days or less, 77 percent in 90 days or less. Seventeen percent of the applications took up to six months to process (Figure 2). These decision times are well within the statutory deadlines set for decision on waterway and wetland decisions.

We are committed to continually evaluating our performance and making changes that improve the process and environmental protection. But applying for and receiving waterway and wetland permits will always take longer than getting a goose hunting or kitchen-remodeling permit. Waterway and wetland permit decisions represent sometimes-irreversible commitments of public water resources. Over time, they determine the future of Wisconsin's fishing, hunting, and boating enjoyment and local tourism economies.



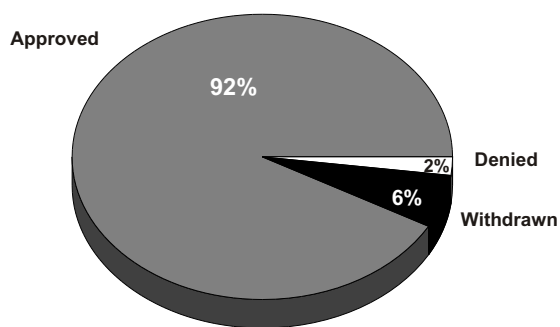
## Waterway and Wetland Permitting



**Figure 2.** Waterway and wetland permit decision times in 2002.

## Permit Approval Rate Remains High; Process Benefits Environment and Landowner

The 2002 approval rate remains high because we continue to work with people on project modifications that meet their needs while protecting lakes, streams and wetlands (Figure 3). These modifications often save the applicant time, money and hassles.



**Figure 3.** Waterway and wetland permit decision outcomes in 2002.

## Protecting Public Resources Across Wisconsin

Lakes, streams, and wetlands across the state were subject to 4,869 permitted alterations in 2002 (Figure 4).



## Enforcement Protects Resources, Promotes Fairness to Those Who Follow the Rules

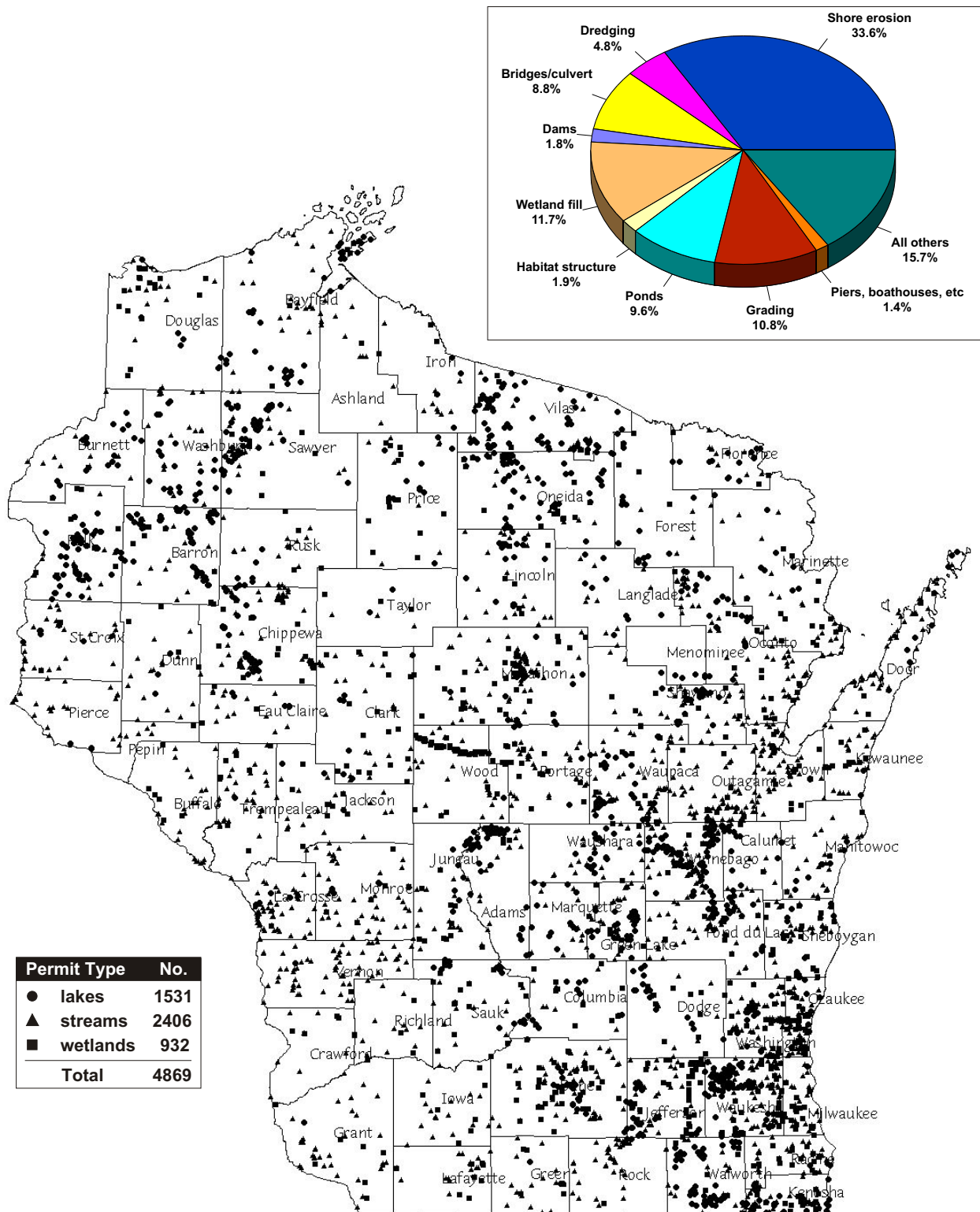
We take enforcement seriously to stop harm to water resources and to be fair to those who do follow the process. In 2002, 238 people who violated protective laws for lakes, streams or wetlands were cited by wardens or referred to prosecuting agencies. In addition to the costs of restoring the sites, violators paid forfeitures ranging from \$3000 to \$507,000.

## Wisconsin's Direction on Public Waters Carrying out DNR's Mission

*How should state policy on surface waters evolve in the future?* The DNR's key recommendations, described below, are drawn from the agency's mission statement.

- Maintain the extent of waters that are public -- and the level of protection under Wisconsin's statutory and common law -- in order to preserve our fish and wildlife and the ecosystems they rely on.

Most, but not all, surface water in Wisconsin is public. No musky or merganser can tell the difference between public and private waters they use and depend on all waters. To protect Wisconsin fish and wildlife populations and avoid harm to the full range of public rights, the state needs to keep the inclusive definitions of navigability and ordinary high water mark.

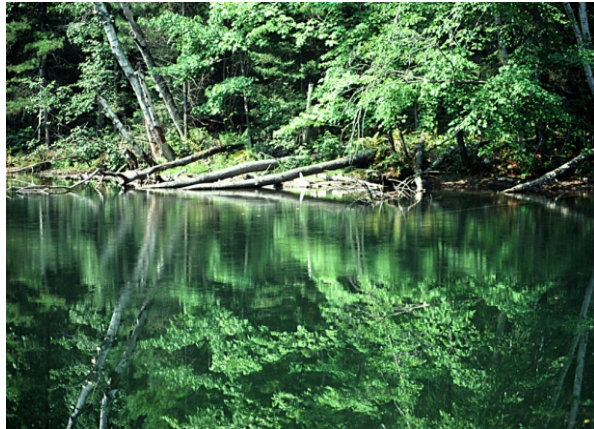


**Figure 4.** The distribution of waterway and wetland permits on Wisconsin's lakes, streams, and wetlands in 2002. (Inset: Proportion of approved permits by category)

## Waterway and Wetland Permitting

- Ensure the rights of all Wisconsin citizens to use and enjoy public waters. Listen to them and understand their views about how they use lakes, stream and wetlands.

Waterfront property owners, boaters of all types, anglers and hunters share our public waters. Public



notices and proceedings before independent administrative law judges should be retained to assure these and other citizens basic access to decisions affecting these public resources, and to resolve the small number of highly contentious cases. This also means that decisions about state waters can be delegated to local governments in carefully designed situations.

- Consider the future and those who will follow. The impacts of many small actions or waterfront projects may be difficult to see today, but research shows that losing shallow water habitat bit by bit is harming aquatic community stability and fish reproduction and growth. And the surface area of lakes and rivers for boating and fishing is actually shrinking, with consequences for all users now and in the future.

### More People, More Uses of Public Waters: Meeting the Challenges

*What is DNR doing to improve its permit program?* Managing situations where public and private rights meet has never been easy and the challenges are growing. The major ways we intend to manage these challenges, as well as a few of our recent efforts, are described below.

- Clarify standards and streamline procedures

In 2002, we worked intensively with the Legislative Council Special Study Committee on Navigable Waters to draft legislation recodifying Chapter 30 of the Wisconsin Statutes. The draft legislation would clarify the jurisdiction and standards, as well as streamlining some procedures. The Natural Resources Board adopted two administrative rules, developed by DNR staff, setting precise standards for DNR decisions on waterway permits: (1) simple dimensional standards for swim rafts; and (2) design standards for wetland restoration projects that ensure minimal side effects to lakes and streams and also minimize permit review work.

In 2003, we are at work on administrative codes for decisions on shore erosion control structures, piers and fish passage at dams. With these and additional specific standards, landowners will know what's allowed on the waterfront and can plan accordingly. Setting more standards will make it easier to combine permit review steps with additional willing local governments and with other agencies. We will continue working to spread partnerships to achieve one-stop decision making for all.

- Seek partnerships to save time and reduce duplication

A 1999 permit partnership agreement between DNR and Marathon County regarding permits for nonmetallic mines affecting public waters has saved applicants time and money. Using the new streamlined process that resulted from the agreement, one applicant did use design standards that protect water resources, got a permit in 14 days and saved \$200 in application fees, while 16





individual waterfront property owners also saved 30 to 60 days time in 2002 as a result of combined state and county public notice and review processes. A similar agreement with Washington County is drafted and awaits attention from a set of newly-elected county board supervisors.

2002 was the first full year that federal projects to restore wetlands have been receiving permits more quickly under an agreement between DNR, U.S. Fish & Wildlife Service and Natural Resources Conservation Service. The agreement involves state staff earlier in project planning and avoids duplicative reviews. Now, federal staff conduct analyses for side effects on lakes and streams in the course of their regular project design work

- Use technology to make DNR information and technical assistance easily available

For the first full year in 2002, all citizens could receive information about permit requirements and get application forms on DNR's Web site. They also could read the same handbook of instructions that DNR permit review staff use, and search a database of all of our permit decisions. You can access this information by visiting the following link: <http://www.dnr.state.wi.us/org/water/fhp/waterway/>

The Wisconsin Wetland Inventory began using new methods to more quickly produce computerized maps from aerial photos. Site photographs and permit documents can now be automatically stored in electronic form. Long-term, these small changes significantly reduce the cost and time of storing state records about lake, stream and wetland alterations.

Readily available information about water resources is critical to helping people avoid purchasing property that can't be used in the way they want or that requires major alterations to address water issues. Over time, we expect to catalog which waters are navigable and make all of our information on public waters available electronically. Public notices and other permit process steps also will occur over the Web.

- Recruit and retain critical mass of top-notch professional staff.

Technology, partnerships and codification will help us meet our goal of timely decisions and water resource protection, but Wisconsin citizens still rightly insist on talking with a live human being about their waterfront property and their projects and not all decisions can be reduced to numbers. Currently, 35 Water Management Specialists in DNR field stations annually work on waterway and wetland issues with an estimated 10,000 landowners ranging from individuals to major corporations. These same specialists assist Wisconsin's 500 local governments with thousands of complex decisions each year under those governments' floodplain, shoreland and wetland ordinances. And the specialists work with the owners of Wisconsin's 3,500 or so dams and assist with emergency response in dam breaks, floods and droughts. Five Regional Habitat Experts and five staff in Madison round out the program by providing training and troubleshooting, data and budget systems, and similar tools. They also develop standards and policy on emerging water uses and issues. Not long ago, turnover and inexperience were problems. Today, the staff bring a minimum of three and an average of 14 years of experience to the tough task of balancing public and private rights.

If you have questions about the content of this report or want further information, contact:

**Mary Ellen Vollbrecht**  
**Chief, Rivers & Habitat Protection Section,**  
**608-264-8554,**  
**[mary.vollbrecht@dnr.state.wi.us](mailto:mary.vollbrecht@dnr.state.wi.us)**

If you are involved in water projects, you will want to know the current water management staff that serves your area (Table 1 - following page)..

**For additional information visit <http://www.dnr.state.wi.us/org/water/fhp/waterway>**

## Waterway and Wetland Permitting

**Table 1.** Current water management specialists and the area(s) that they serve.

COUNTY	WATER MGMT SPEC	LOCATION	TELEPHONE
Adams	Vacant	Wisconsin Rapids	715-421-7815
Ashland	John Spangberg	Ashland	715-685-2923
Barron	Dan Harrington	Cumberland	715-822-5421x108
Bayfield	John Spangberg	Ashland	715-685-2923
Brown	Jon Brand	Green Bay Area	920-448-5166
Buffalo	Mark Schraufnagel	Black River Falls	715-284-1424
Burnett	Ed Slaminski	Spooner	715-635-4097
Calumet	Mike Hanaway	Mishicot	920-755-4942
Calumet - L Winn & Tribes	Kristy Rogers	Oshkosh	920-424-7885
Chippewa	Dan Koich	Eau Claire	715-839-3769
Clark	Mark Schraufnagel	Black River Falls	715-284-1424
Columbia	Jeff Schure	SCR	608-275-3228
Crawford	Jean Unmuth	Dodgeville	608-935-1926
NW Corner Dane	Jeff Schure	SCR	608-275-3228
Dane	Cami Peterson	SCR	608-275-3208
Dodge	Dan Hunt	Horicon	920-387-7878
Door	Vacant	Sturgeon Bay	920-746-2873
Douglas	Steve LaValley	Superior	715-392-0803
Dunn	Dan Koich	Eau Claire	715-839-3769
Eau Claire	Dan Koich	Eau Claire	715-839-3769
Florence	Jayne Wade	Woodruff	715-358-9214
Fond du Lac(drain to L. Michigan)	Mike Hanaway	Mishicot	920-755-4942
Fond du Lac	Kristy Rogers	Oshkosh	920-424-7885
Forest	Jim Grafelman	Rhineland	715-365-8991
Grant	Tom Boos	Dodgeville	608-935-1920
Green	Tom Boos	Dodgeville	608-935-1920
Green Lake	Shawn Eisch	Wautoma	920-787-4686 x 3016
Iowa	Tom Boos	Dodgeville	608-935-1920
Iron	Dan Houston	Park Falls	715-762-4684x102
Jackson	Mark Schraufnagel	Black River Falls	715-284-1424
Jefferson S I-94	Mike Halsted	Janesville	608-743-4820
Jefferson N I-94	Dan Hunt*	Horicon	920-387-7878
Juneau	Vacant	Wisconsin Rapids	715-421-7815
Kenosha	Dave Meyer	Sturtevant	262-884-2355
Kewaunee	Mike Hanaway	Mishicot	920-755-4942
LaCrosse	Dave Pericak	LaCrosse	608-785-9010
Lafayette	Tom Boos	Dodgeville	608-935-1920
Langlade	Gary Bartz	Antigo	715-623-4190x3111
Lincoln	Gary Bartz	Antigo	715-623-4190x3111
Manitowoc	Mike Hanaway	Mishicot	920-755-4942
Marathon	Keith Patrick	Wausau	715-241-7502
Marinette	Robert Rosenberger	Peshigo	715-582-5041
Marquette	Shawn Eisch	Wautoma	920-787-4686 x 3016
Menominee	Scott Koehnke	Shawano	715-526-4232
Milwaukee	Heidi Hopkins	Milwaukee	414-263-8522
Monroe	Dave Pericak	LaCrosse	608-785-9013
Oconto	Robert Rosenberger	Peshigo	715-582-5041
Oneida	Jim Grafelman	Rhineland	715-365-8991
Outagamie	Jon Brand	Green Bay Area	920-448-5166
Ozaukee - N Cedar Sauk Rd	Kathi Kramasz	Plymouth	920-892-8756
Ozaukee - S Cedar Sauk Rd	Cherie Weiloch	Milwaukee	414-263-8601
Pepin	Dan Koich	Eau Claire	715-839-3769
Pierce	Eunice Post	Baldwin	715-684-2914
Polk	Dan Harrington	Cumberland	715-822-5421x108
Portage (K Patrick N Part)	Vacant	Wisconsin Rapids	715-421-7815
Price	Dan Houston	Park Falls	715-762-4684x102
Racine	Shane Heyel	Sturtevant	262-884-2356
Richland	Jean Unmuth	Dodgeville	608-935-1926
Rock	Mike Halsted	Janesville	608-743-4820
Rusk	Jon Kleist	Ladysmith	715-532-4367
St. Croix	Eunice Post	Baldwin	715-684-2914
Sauk E Hwy 12	Jeff Schure	SCR	608-275-3228
Sauk W Hwy 12	Jean Unmuth	Dodgeville	608-935-1926
Sawyer	Dave Kafura	Hayward	715-634-9658x3523
Shawano	Scott Koehnke	Shawano	715-526-4232
Sheboygan	Kathi Kramasz	Plymouth	920-892-8756
Taylor	Jon Kleist	Ladysmith	715-532-4367
Trempealeau	Mark Schraufnagel	Black River Falls	715-284-1424
Vernon east of Hwy 14-27	Dave Pericak	La Crosse	608-785-9013
Vernon west of Hwy 14-27	Dave Pericak	LaCrosse	608-785-9010
Vilas	Jayne Wade	Woodruff	715-358-9214
Walworth	Pam Schense	Waukesha	262-574-2136
Washburn	Ed Slaminski	Spooner	715-635-4097
Washington	Ben Callan	SER	414-263-8498
Waukesha - North of Hwy 18	Geri Urban	Waukesha	262-574-2137
Waukesha - South of Hwy 18	Pam Schense	Waukesha	262-574-2136
Waupaca	Scott Koehnke	Shawano	715-526-4232
Waushara	Shawn Eisch	Wautoma	920-787-4686 x 3016
Winnebago-downstream of L.Winnebago	Jon Brand	Green Bay	920-448-5166
Winnebago	Kristy Rogers	Oshkosh	920-424-7885
Wood	Rhonda Kenyon	Wisconsin Rapids	715-421-7815

\* Point of contact for split counties